IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ratan Singh Chouhan. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 7397/2006

...

Date of Order: March 21, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Harish Purohit, for the petitioner.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the order Annx.1 dated dated 11-9-2006 and the communication Annx.6 dated 12-10-2006 and seeks a direction to the respondents to provide him compassionate appointment.

Succinctly stated, the facts of the case are that petitioner's father late Kalyan Singh was serving with the respondents as Sub-Inspector and died while in service on 20-9-2005. The petitioner applied for compassionate appointment but the same was refused vide order dated 11-9-2006 (Annx.1) on the ground that his elder brother Raghunath Singh has been in the Government Service even eleven years prior to the death of deceased Government employee Kalyan Singh and as such, as

per rule 5 of the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996 (for short, "the Rules of 1996 hereinafter), the petitioner is not entitled for compassionate appointment and by the communication Annx.6 dated 12-10-2006, the petitioner was informed accordingly.

I have heard learned counsel for the petitioner.

Rule 5 of the Rules of 1996 relates to appointment on compassionate ground subject to certain conditions, which reads as under:-

> "5. Appointment subject to certain conditions.- When a Government servant dies while in service one of his/her dependants may be considered for appointment in Government service subject to the conditions that employment under these Rules shall not be admissible in cases where the spouse or at least one of the sons, unmarried daughters, adopted son/daughter of the deceased Government servant is already employed on regular basis under the Central/State Government or Statutory Board, Organisation/Corporation owned or controlled wholly or partially by the Central/State Government at the time of death of the Government servant;
>
> Provided that this condition shall not apply where the widow seeks employment for herself."

Learned counsel for the petitioner has challenged the validity of rule 5 of the Rules of 1996 on the ground that it is ultra vires and further contended that the respondents erred in law in denying compassionate appointment to the petitioner on the ground that his elder brother is in government service.

The controversy involved in the instant case, regarding validity of rule 5 of the Rules of 1996, sets at rest in view of the decision of a Division Bench of this Court in The Board of Rajasthan & Anr. Vs. Rajendra & 3 ors., 2001 (2) Western Law Cases (Raj.) 51, wherein the Division Bench, placing reliance on various decisions of the Hon'ble Supreme Court, held as under:-

> " The above Rule says that if already one member of the family of the deceased Government servant is in employment on regular basis under the Central/State Government or Statutory Board/Organisation/Corporation owned or controlled wholly or partially by the Central/State Government, employment on compassionate ground shall not be admissible to any of them. However, such restriction shall not be applied where the widow seeks employment for herself. This is a valid criteria and has an intelligible differential and rational behind it. It has got a reasonable nexus with the object sought to be achieved. Besides the fact that Rule 5 has been adjudged constitutionally valid by the learned Single Judge himself. The Supreme Court in a number of judgments held the restriction to deny employment on compassionate ground on the premises that where rules provided that such appointment would not be given if one of the members of the family was already in employment."

While observing above, the Division Bench placed reliance on various decisions of the Hon'ble Supreme Court. In S. Mohan Vs. Government of Tamil Nadu, (1998) 9 SCC 485, wherein appellant's mother while in service of Municipality died when the appellant was 12/13 years old and his two brothers were already employed and his father was receiving pension. 10

years later, the appellant applied for and given by the municipality compassionate appointment. The Supreme Court held that appellant's compassionate appointment was unwarranted and ratification thereof was rightly refused by the Government. The Apex Court upheld the consequential order of Limitation of the appellant and also held that the continuance of the appellant in service under interim orders of the Tribunal is inconsequential in this regard and held that the compassionate appointment in that case was unjustified.

In State of H.P. & Anr. Vs. Jafli Devi, (1997) 5 SCC 301, on which the Division Bench placed reliance, the Hon'ble Supreme Court held that where a son of the deceased employee was already in government service, the High Court erred in interferring with the denial of compassionate appointment by the department to another son of the same deceased employee.

In the instant case, vide impugned order Annx.1 dated 11-9-2006 and the communication Annx.6 dated 12-10-2006, the petitioner has been denied compassionate appointment on the ground that his elder brother Raghuveer Singh has been in the Government Service even ten years prior to the death of his father and it has not been controverted by the petitioner. Therefore, in view of the decisions of the Hon'ble Supreme Court as also the Division Bench decision of this Court in The Board of Rajasthan & Anr. Vs. Rajendra & 3 ors. (supra),

upholding the validity of Section 5 of the Rules of 1996, no case for interference in the impugned orders is made out.

In this view of the matter, I do not find any merit in the writ petition and it is dismissed accordingly. There shall be no order as to costs.

(H.R. PANWAR), J.

mcs